

Montana Water Court
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IN THE WATER COURT OF THE STATE OF MONTANA
CLARK FORK DIVISION
KOOTENAI RIVER BASIN (76D)
PRELIMINARY DECREE

CLAIMANTS: Paula Paasch; Colby Paasch

OBJECTOR: United States of America (USDA Forest Service)

CASE 76D-0222-R-2022
76D 5800-00

NOTICE OF FILING OF MASTER'S REPORT

This Master's Report was filed with the Montana Water Court on the above stamped date. Please review this report carefully.

You may file a written objection to this Master's Report within **10 days** of the stamped date if you disagree or find errors with the Master's findings of fact, conclusions of law, or recommendations. Rule 23, W.R.Adj.R. If the Master's Report was mailed to you, the Montana Rules of Civil Procedure allow an additional 3 days be added to the 10-day objection period. Rule 6(d), M.R.Civ.P. If you file an objection, you must serve a copy of the objection to all parties on the service list found at the end of the Master's Report. The original objection and a certificate of mailing to all parties on the service list must be filed with the Water Court.

If you do not file a timely objection, the Water Court will conclude that you agree with the content of this Master's Report.

MASTER’S REPORT

Statement of the case

The United States of America (USDA Forest Service) (“USDA Forest Service”) filed an objection to the place of use of the above captioned claim.

The Water Master held a status conference to discuss the objection to the claim. Claimants failed to appear. The USDA Forest Service requested time to file a suggested resolution of its objection and evidence in support.

On June 8, 2023, the USDA Forest Service filed its proposed resolution of objection. Pursuant to Rule 22, W.R.Adj.R., a deadline was set for claimants to Show Cause why the claim should not be amended as proposed by the USDA Forest Service. Claimants did not respond by the deadline.

Issue

Should the place of use for domestic claim 76D 5800-00 be amended?

Finding of fact

The historically accurate place of use legal land description for domestic claim 76D 5800-00 is the NWSWSW of Section 1, Township 31 North, Range 34 West, Lincoln County.

Principles of law

1. A properly filed Statement of Claim for Existing Water Right or an amended claim for Existing Water Right is prima facie proof of its content. Section 85-2-227, MCA. This prima facie proof may be contradicted and overcome by other evidence that proves, by a preponderance of the evidence, that an element of the prima facie claim is incorrect. This is the burden of proof for every assertion that a claim is incorrect. Rule 19, W.R.Adj.R. A preponderance of the evidence is a “modest standard” and is evidence that demonstrates the fact to be proved is “more probable than not.” *Hohenlohe v. State*, 2010 MT 203, ¶ 33, 357 Mont. 348, 240 P.3d 628.

2. The Montana Water Court is permitted to use information submitted by the Department of Natural Resources and Conservation, the statement of claim, information from approved compacts, and any other data obtained by the Court to evaluate water right claims. Section 85-2-231(2), MCA.

3. All parties subject to the jurisdiction of the Montana Water Court in this adjudication have the obligation to comply with Orders of this Court, including Orders issued by a Master appointed by the Court. When a claimant fails to comply with an Order issued by the Water Court, including an order issued by a Water Master appointed by the Court, the Court upon its own initiative or upon motion, can among other actions: 1) modify the elements of the claim to conform with the information in the claim file, information obtained by the Court, or information included in an objection, or 2) terminate the claim. Rule 22, W.R.Adj.R.

Analysis

Objection, sanction, and amendment of claim 76D 5800-00

The USDA Forest Service filed a proposed modified place of use legal land description based upon the subdivision, lot, and block for the place of use identified by prima facie statement of claim 76D 5800-00.

Conclusions of law

Based upon the USDA Forest Service's evidence, and the claimants' repeated failure to comply with orders issued by the Water Master, the requested sanction appears just. The USDA Forest Service's objection is resolved.

Recommendations

Based upon the foregoing, claim 76D 5800-00 should be amended as follows to accurately reflect historical use.

PLACE OF USE:

| | | | | | | |
|--------------|-----------------|----------------|------------|------------|------------|---------------|
| <u>ACRES</u> | <u>GOVT LOT</u> | <u>QTR SEC</u> | <u>SEC</u> | <u>TWP</u> | <u>RGE</u> | <u>COUNTY</u> |
| 0.91 | | NWSWSW | 1 | 31N | 34W | LINCOLN |

Subdivision: NORTH TROY SUBDIVISION TRACT/LOT: 001 BLOCK: 003

A Post Decree Abstract of Water Right Claim accompanies this report to confirm

implementation of the recommendations in the state's centralized water right record system.

ELECTRONICALLY SIGNED AND DATED BELOW

Service via USPS Mail

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Service via Electronic Mail

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**POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
KOOTENAI RIVER
BASIN 76D**

Water Right Number: 76D 5800-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: COLBY PAASCH
PO BOX 140
TROY, MT 59935 0140

PAULA PAASCH
PO BOX 140
TROY, MT 59935 0140

Priority Date: MARCH 17, 1954

Type of Historical Right: FILED

Purpose (use): DOMESTIC

Flow Rate: 26.93 GPM

Volume: 1.50 AC-FT

Households: 1

Maximum Acres: 0.91

Source Name: SPRING, UNNAMED TRIBUTARY OF KOOTENAI RIVER

Source Type: GROUNDWATER

Point of Diversion and Means of Diversion:

| <u>ID</u> | <u>Govt Lot</u> | <u>Qtr Sec</u> | <u>Sec</u> | <u>Twp</u> | <u>Rge</u> | <u>County</u> |
|-----------|-----------------|----------------|------------|------------|------------|---------------|
| 1 | | NESESE | 2 | 31N | 34W | LINCOLN |

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: FLOWING

Subdivision: NORTH TROY SUBDIVISION

Period of Use: JANUARY 1 TO DECEMBER 31

Place of Use:

| <u>ID</u> | <u>Acres</u> | <u>Govt Lot</u> | <u>Qtr Sec</u> | <u>Sec</u> | <u>Twp</u> | <u>Rge</u> | <u>County</u> |
|-----------|--------------|-----------------|----------------|------------|------------|------------|---------------|
| 1 | 0.91 | | NWSWSW | 1 | 31N | 34W | LINCOLN |

Subdivision: NORTH TROY SUBDIVISION TRACT/LOT: 001 BLOCK: 003

Total: 0.91